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1953 **K** **File No.**

Legal Dept-
G. **BRANCH**

P 3E

Subject:— Opinions on the Separation of Judicial and Executive Function

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C O N T E N T S.

Legal Department File No. O. Separation of Judicial and Executive Functions/53(G.I

Sr.No.	R.I./O.No.	Subject	Pages.
		Opinions on the Separation of Judicial and Executive Functions.	
1)	O.No.G-246/28-4-53.	Whether the Essential Supplies (T.P.) Act,1946, the B'bay Essential commodities and Cattle(Control) Act,1946 and the B'bay Essential Commodities and Cattle (Control)(Enhancement of Penalties) Act,1947 require amendment so as to affect Separation of the judiciary from the Executive.	1-8
2)	O.No.G-346/16-6-53	Whether Essential Supplies (Temporary Powers) Act,1946, requires to be amended in view of the B'bay Separation of Judicial and Executive Functions Act, 1951.	9-14

L.D.R.I.No. 6-298,dt. 20-3-53

Submitted.

The question for consideration in this case is whether the Essential Supplies (Temporary Powers) Act, 1946, the Bombay Essential Commodities and Cattle (Control) Act, 1946 and the Bombay Essential Supplies (Temporarary Powers) and the Essential Commodities and Cattle (Control) (Enhancement of Penalties) Act, 1947 require amendment so as to affect separation of the judiciary from the executive.

It wi[illegible] the G.R. circular no. 806/5-X, dated 3-3-53 that the Bombay Separation of the Judicial and the Executive functions Act, 1951 which was passed with a view to implement Government decision to separate the Judiciary fro the Executive has not yet been brought into force. Before it can be brought into force some minor amendments are to be made and preliminary arrangements are to be completed, hence the aove circular.

The Civil Supplies Department is of the opinion that none of the above mentioned three Acts need amendment. The papers are shown to L.D. before passiong them on to H.D.

Legal Deptt.

A.S. (Legis.) 3-5

When the Bombay Separation of Judiciary AND Executive Functions Bill, 1951, was first published it did not provide for the insertion of section 38A in the Code of Criminal Procedure. When the Bill was referred to the Select Committee the Select Committee proposed the insertion of section 38A and also suggested similar amendment in the various Acts specified in the Schedule to the Bill. The Select Committee has justified the inclusion of section 38A andthe other amendments of the various Acts in the following terms:

"We have also added a new provision that in any provision of the Code or any other law where such officer is to be empowered to exercise such power, such empowering will be made in consultation with the High Court although no express provision might have been made for the purpose."

The Select Committee also amended -

(1) the Reformatory Schools Act, 1897,

(2) the Indian Forest Act, 1927, and

(3) the Bombay Village Sanitation Act, 1899, inter alia referred to in the Schedule to the Bill by providing that the special empowerment should be made by the State Government inconsultation with the High Court.

Sd/-
25/4
Addl D.S.

C.G.R/31-7 /C 5

Office of the R.L.A.

No amendment is necessary in the Acts mentioned in the Civil Supplies Department notes at pages 3-7.

o/c Sd/- 28/4

Remembrancer of Legal Affairs.

U.R. to H.D., No. G- 246 dated the 28th April '53 .

C.G.R./31-7 /C 5

Legal Department.

The Civil Supplies Department is mainly concerned with two enactments namely the Essential Supplies (Temporary Powers) Act, 1946 and the Bombay Essential Commodities and Cattle (Control) Act, 1946. Both these Acts provide for issue of control orders relating to certain essential commodities. Under the said Acts, there is no executive funtion entrusted to any judicial Magistrate as defined in section 6A of the Criminal Procedure Code (added under the B.S.of J.& E. F. Act, 1951). Consequently the Acts do not require any amendment. Under the orders issued under the Essential Supplies (Temporary Powers) Act, 1946 or the Bombay Essential Commodities and Cattle (Control) Act, 1946, certain executive functions e.g. issue of licences, permits and notices etc., are entrusted to the District Magistrates and certain Revenue Officers. As the District Magistrates are classified as the executive Magistrates under section 6-A of the Criminal Procedure Code, the orders also do not require any amendment. The view taken by the Civil Supplies Department is therefore, correct.

o/c Sd/-

Additional Secretary to Government.

U.R. to C.S.D.,No. G-346 dated the 15th & June 1953.

C.G,R./31-7 /C 5

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